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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **SOUTHERN DIVISION**
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13 **CHARLOTTE ERNSTING,**

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15 **Plaintiff,**

16 **v.**

17 **PACIFIC BELL TELEPHONE**
18 **COMPANY, et al.,**

19 **Defendants.**
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} **Case No.: SACV 15-01682-CJC(KESx)**

} **ORDER REMANDING CASE**
23

24 **I. INTRODUCTION**
25

26 Plaintiff Charlotte Ernsting brings this action against Pacific Bell Telephone
27 Company, FMR LLC, Sedgwick Claims Management Services Inc., Hewitt Associates
28 LLC (collectively, the “Non-Helmsman Defendants”), and Helmsman Management

1 Services LLC (“Helmsman”) for misrepresentation, concealment, negligent
2 nondisclosure by a fiduciary, intentional infliction of emotional distress, negligent
3 infliction of emotional distress, and negligence. Plaintiff originally sued Defendants in
4 state court, and Defendants removed to this Court in October 2015 on the basis that some
5 of Plaintiffs’ claims were preempted by ERISA.¹ (Dkt. 1 [“Notice of Removal”].)
6 Helmsman and the Non-Helmsman Defendants filed motions to dismiss on October 27,
7 which the Court granted in part and denied in part on December 16, ruling that some of
8 Plaintiff’s claims—but not all—were preempted by ERISA. (Dkt. 28.) Suspecting that it
9 no longer had subject matter jurisdiction over the remaining, non-preempted claims, the
10 Court ordered the parties to show cause why the action should not be remanded to state
11 court. Helmsman and Plaintiff consented to remand, but the Non-Helmsman Defendants
12 objected, arguing that the Court should retain jurisdiction and force Plaintiff to clarify
13 some of her claims. For the following reasons, the Court finds that the prudent course is
14 to remand, and the action is REMANDED to state court.

15 16 **II. DISCUSSION**

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18 This case has its genesis in a sexual harassment lawsuit Plaintiff brought against
19 Pacific Bell in state court in the late 1990s. (Dkt. 1-1 [“Compl.”] ¶ 13.) After Plaintiff
20 was sexually harassed by colleagues, she developed a stress-related medical condition
21 that prevented her from working. (*Id.* ¶ 14.) She sued Pacific Bell and recovered a
22 judgment of \$682,716. (*Id.* ¶ 15.) Pacific Bell appealed, arguing that it was entitled to
23 offset the judgment by the amount of workers’ compensation benefits it had already paid
24 Plaintiff—and which it was obligated to pay her in the future. (*Id.* ¶ 18.) The California
25 Court of Appeal agreed, and remanded to the trial court to determine how much of an
26 offset the workers’ compensation payments totaled. On remand, the trial court
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28 ¹ The Employee Retirement Income Security Act of 1974.

1 determined that Plaintiff had already received \$280,768.24 in workers' compensation
2 payments, and that she was going to receive an additional amount with a then-present
3 value of \$453,582.00, for a sum total of \$734,260.24. (Dkt. 27-2 at 3.) Because that total
4 was greater than the amount Plaintiff was awarded at trial, the trial court zeroed out the
5 judgment. (*Id.*)

6
7 In September 2015, Plaintiff filed a state court complaint against Defendants for a
8 number of state law causes of action. (*See* Compl.) The gist of Plaintiff's complaint is
9 this: many years ago, at the hearing on remand where the state court was determining the
10 amount of offset, Defendants testified that Plaintiff would receive lifetime disability
11 benefits and lifetime full medical coverage, without the need for reevaluation or
12 additional independent medical examinations. (*Id.* ¶¶ 20–23.) Now, Plaintiff claims that
13 Defendants are failing to pay her the promised benefits, and that they are “harass[ing] and
14 threaten[ing]” her by, among other things, demanding medical records from her medical
15 providers, threatening to cut off her benefits, surveilling her, and falsifying certain
16 documents and records. (*Id.* ¶¶ 24–30.) Plaintiff's complaint sought “unpaid benefits,”
17 as well as other damages for the alleged tortious conduct. (*Id.* ¶¶ 25; 31.)

18
19 Helmsman and the Non-Helmsman Defendants moved to dismiss all of Plaintiff's
20 claims on a number of grounds, including that several of her claims were preempted by
21 ERISA because they sought ERISA benefits that can only be obtained through an action
22 under 29 U.S.C. § 1132. For the reasons set forth in the Court's December 16 Order, the
23 Court agreed that insofar as Plaintiff's claims for misrepresentation, concealment,
24 negligent nondisclosure by a fiduciary, and negligence sought unpaid ERISA benefits,
25 they were preempted. Relying on *Dishman v. UNUM Life Ins. of America*, 269 F.3d 974,
26 (9th Cir. 2001) and *Daie v. Reed Group, Ltd.*, No. C 15-03813 WHA, 2015 WL 6954915
27 (N.D. Cal. Nov. 10, 2015), however, the Court determined that Plaintiff's negligent
28 infliction of emotional distress (“NEID”) and intentional infliction of emotional distress

1 (“IIED”) claims were conceivably premised not on her denial of ERISA benefits, but on
2 an independent legal duty Defendants had not to harm Plaintiff. Essentially, Plaintiff’s
3 complaint could be read to allege that Defendants’ harassment of Plaintiff went beyond
4 “daily plan administration,” *Dishman*, 269 F.3d at 984, and that her NEID and IIED
5 claims were therefore not preempted. (*See* Dkt. 1 Exh. A [“Compl.”] ¶ 26 (“Defendants
6 have continued to harass and threaten [Plaintiff] by keeping her under surveillance and
7 seeking to invade her privacy[.]”))

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9 The Court ruled, however, that Plaintiff’s claims for misrepresentation,
10 concealment, negligent nondisclosure by a fiduciary, and negligence could “only
11 plausibly be read to support her claim for unpaid benefits,” and were therefore
12 preempted. (Dkt. 28 at 8.) Those claims were dismissed with prejudice insofar as they
13 sought ERISA benefits.

14
15 Noting that Plaintiff’s remaining claims were state law claims, the Court ordered
16 the parties to show cause why the action should not be remanded to state court.
17 Helmsman and Plaintiff consented to remand. (Dkt. 29; Dkt. 31.) The Non-Helmsman
18 Defendants, however, have objected to the prospect of remand. They argue that
19 Plaintiff’s NIED and IIED claims *may* be premised on the violation of an independent
20 legal duty, but they *may not*, and without clarification of Plaintiff’s complaint, it is
21 impossible to say. If this Court remands, and it becomes clear in discovery that
22 Plaintiff’s NIED and IIED claims are actually based on a denial of benefits and therefore
23 preempted, the Non-Helmsman Defendants say that they will be forced to remove again
24 to federal court to have those claims dismissed, wasting everyone’s time and resources.
25 Additionally, the Non-Helmsman Defendants complain that Plaintiff carelessly pled her
26 allegations against “all Defendants,” so there is no way to say if her viable NIED and
27 IIED claims are even asserted against the Non-Helmsman Defendants specifically.

1 Plaintiff, for her part, assures the Court that she is “not seeking unpaid benefits but
2 rather seeks recovery for the continuing emotional distress, harassment, and invasions of
3 privacy.” (Dkt. 31 at 2.) This would normally allay the Court’s concerns about Plaintiff
4 attempting to re-assert preempted claims before the state court. But troublingly, Plaintiff
5 also argues that “[Defendant] Pacific Bell continues to miscast this action as one for
6 benefits rather than the state law tort claim action that it is.” (*Id.* at 1–2.) Plaintiff made
7 this argument on the motion to dismiss, and it is wrong. Plaintiff’s complaint clearly
8 sought unpaid benefits. (*See* Compl. ¶¶ 24–25 (“Defendants failed . . . to make the
9 promised disability payments, refused to pay medical and prescription costs, failed to
10 make pension payments, and sought termination of [Plaintiff’s workers’ compensation]
11 benefits . . . [t]he exact amount of the unpaid benefits shall be determined at trial.”) And
12 lest there be any confusion as to the Court’s December 16 Order, *any* of Plaintiff’s state
13 law claims which seek unpaid ERISA benefits are preempted by ERISA. She may *only*
14 seek those benefits by asserting an appropriate cause of action under 29 U.S.C. § 1132.

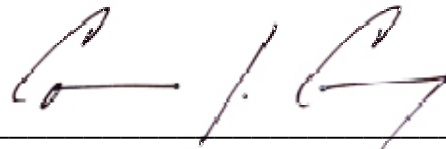
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16 That is all to say that the Non-Helmsman Defendants are correct that Plaintiff’s
17 complaint—and her further representations—are not a model of clarity. As the Non-
18 Helmsman Defendants point out, Plaintiff’s NIED and IIED claims are somewhat unclear
19 as to what facts she is attempting to allege, and against which Defendants. Nonetheless,
20 Plaintiff does allege that Defendants have “harass[ed]” and “threaten[ed]” her by, among
21 other things, “keeping her under surveillance.” These allegations, as the Court ruled in
22 its December 16 Order, are sufficient to persuade the Court that Plaintiff’s NIED and
23 IIED claims are not necessarily preempted. There is no reason for this Court to sort out
24 which Defendants, exactly, those non-preempted claims are being asserted against,
25 because that determination has no bearing on subject matter jurisdiction. This Court will
26 not endeavor to manage the pleadings, only to send them back to the state court.
27 And Plaintiff has now represented to the Court that she is seeking traditional tort
28 recovery, not ERISA benefits under the guise of a state law cause of action.

1 Accordingly, the Court finds that it lacks subject matter jurisdiction, and the case must be
2 remanded under 28 U.S.C. § 1447(c).

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4 **IV. CONCLUSION**

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6 For the foregoing reasons, the case is REMANDED to Orange County Superior
7 Court.

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10 DATED: January 15, 2016

A handwritten signature in dark ink, appearing to read 'C. J. Carney', is written over a horizontal line.

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12 CORMAC J. CARNEY
13 UNITED STATES DISTRICT JUDGE
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